

Michigan Law Review

Volume 93 | Issue 6

1995

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John D. Ayer

University of California at Davis

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Recommended Citation

John D. Ayer, *The Last Butskellite*, 93 MICH. L. REV. 1805 (1995).

Available at: <https://repository.law.umich.edu/mlr/vol93/iss6/32>

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THE LAST BUTSKELLITE

*John D. Ayer**

ACTS OF HOPE: CREATING AUTHORITY IN LITERATURE, LAW, AND POLITICS. By *James B. White*. Chicago: University of Chicago Press. 1994. Pp. xv, 322. \$27.50.

I would rather prove my self to be a Gentleman,
by being learned and humble, valiant and inoffensive,
vertuous, and communicable,
than by a fond ostentation of riches

— Izaak Walton¹

In the comedy revue "Beyond the Fringe," Jonathan Miller puzzled over the sign that used to appear in railway restrooms: "gentlemen lift the seat."² Is it descriptive, in the sense that lifting the seat is a condition, perhaps a necessary condition, of the state of being a gentleman? Or is it normative, in the sense that a gentleman should lift the seat, whether he does so in fact or not?³ Or is it injunctive-celebratory, in the sense of "gentlemen, start your engines," or perhaps "God save the queen"?

Miller's durable sendup, like most good comedy, presaged something larger about the society that brought it to birth. Miller bespoke and encouraged — it is always hard to disentangle threads like these — a critical shift in self-consciousness in the British upper middle class. Others might want to call it the rise of Thatcherism in recognition of the in-your-face, grocer's-daughter conservatism that held sway in Britain through most of the 1980s. I would rather call it the decline of the Butskellites. You remember the Butskellites: the allies and followers of "Rab" Butler, Conservative, and Hugh Gaitskell, Labour, the two greatest "Prime Ministers" Britain never had who shaped and defined so much of the first generation of postwar Britain — the years, shall we say, between the coronation of Queen Elizabeth II in 1953 and the in-

* Professor of Law, University of California at Davis. A.B. 1963, J.D. 1968, Louisville; LL.M. 1969, Yale. — Ed. Thanks to Joel Dobris for his helpful comments.

1. IZAAK WALTON, *THE COMPLEAT ANGLER* (PART I) i, 13 (n.p., 1653), *reprinted in* 6 *THE OXFORD ENGLISH DICTIONARY* 452 (2d ed. 1989) (illustrating the third definition of a gentleman: "A man in whom gentle birth is accompanied by appropriate qualities and behavior; hence, in general, a man of chivalrous instincts and fine feelings.").

2. See generally RONALD BERGAN, *BEYOND THE FRINGE . . . AND BEYOND* (1989).

3. Another possibility is that it is an invitation to petty larceny — unless the Defense Department purchased the seat, in which case it might be an invitation to grand larceny, or perhaps treason.

vestiture of Prince Charles in 1969. The Butskellites represented a cozy, meliorist, reassuring sort of centrism when the female royals still slept with their own husbands and the family doctor down at the National Health Service surgery was definitely "in."

James Boyd White, Professor of Law and English and Adjunct Professor of Classics at the University of Michigan, is a gentleman and a Butskellite — perhaps the last Butskellite. In his books and essays, White does not use the word "gentleman" unduly. This is, however, only proper. A gentleman certainly should not call attention to himself, and preaching about gentlemanliness would be vulgar and self-defeating. Still, White's credentials are impeccable. Being born an American is no disability, of course, certainly not if you went to Groton, that most British of American private schools, as White did. Groton, as White himself candidly recalls, "had been founded in the nineteenth century on the model of the English public schools with the aim of recreating in America something of the ideal of the English gentleman. In a rather sentimental way it idealized England, Episcopalian Christianity, genteel country life, and high culture. . . ."⁴ From Groton White went on to Amherst College, where he was told that "[c]onduct befitting a gentleman is expected at all times"⁵ From Amherst he proceeded to the Harvard Law School, where he served as an editor of the law review — in the company of Stephen Breyer, now a Justice of the Supreme Court. But one gets the sense — though White himself might well contest the point — that Harvard was something of an afterthought: the qualities and even the skills that give him his character seem to have been shaped before he went there.

White is not a gentleman merely by education, however. For more than a quarter century, he has occupied himself with the most gentlemanly of activities, the professing of law in the grand style. Law certifies him for a place in the American aristocracy, though it surely would not do so in the British aristocracy; his cross-appointment in the Department of English secures his claim to seriousness on matters of morals and aesthetics. Whatever White's reticence about his own gentlemanly qualities, it is fair to say that he has made it his mission to try to *instruct* in the ways of a gentleman, and thus to confront, and often also to ponder, the pedagogic mys-

4. JAMES B. WHITE, *THIS BOOK OF STARRES: LEARNING TO READ GEORGE HERBERT* 4 (1994) [hereinafter *STARRES*].

5. The Amherst College Bulletin Catalogue Issue for 1958-59 provides, "Conduct befitting a gentleman is expected at all times of students at Amherst College. It is assumed that undergraduates will understand what constitutes gentlemanly conduct without specific regulations forbidding particular actions." AMHERST COLLEGE BULLETIN, CATALOGUE ISSUE 33-34 (1958-59), reprinted in JAMES B. WHITE, *THE LEGAL IMAGINATION* 513 (1973) [hereinafter *LEGAL IMAGINATION*]. The quote in *Legal Imagination* is conclusive proof that White read the catalog.

teries that underlie this curious practice. *Acts of Hope: Creating Authority in Literature, Law, and Politics* embodies the most recent product of this long inquiry and is welcome by anyone who has enjoyed or been instructed by his previous ventures.

Hope is White's sixth book, or seventh, depending on when you count his other book published at the same time, *This Book of Starres*.⁶ White began his career with *The Legal Imagination*,⁷ which is nominally a coursebook, but, in terms of conventional genre boundaries, it is surely one of the most original and unexpected coursebooks ever to appear. In truth, *Legal Imagination* had its provenance, as I will try to show hereafter, but this fact does nothing to lessen its merit. Next came *Constitutional Criminal Procedure*,⁸ another coursebook — perhaps slightly more conventional — which was a joint product of White and his former student James Scarboro. There is every reason to believe that Scarboro, who has since left academia for a distinguished career at the bar, was a full partner in the enterprise, but the project bears many earmarks — including the quirks — of White's distinctive style.

After *Criminal Procedure* there was a gap of sorts in White's writing. White published some articles in respectable journals, but he generated nothing like the torrential outpouring seemingly so typical of his colleagues at the University of Chicago. He seemed to stand as something of an outsider, almost a curiosity, in the dramatic arena of law scholarship. In 1984 White published his first "real" book — *When Words Lose Their Meaning*.⁹ Students of *Legal Imagination* could recognize it as the narrative substructure of that coursebook — a kind of a pony or teacher's manual for the earlier work. *Words* got respectable and generally favorable recognition in the academic press.¹⁰ Other scholars, meanwhile, seemed to catch up with White. The trope of examining "legal" materials on the model, or with the devices, of "literary" studies appeared to gain currency, and White seemed to find himself, perhaps to his surprise, at the head of a small parade.¹¹ Perhaps his new notoriety spurred him on; new work seemed to come forth in somewhat

6. STARRES, *supra* note 4.

7. LEGAL IMAGINATION, *supra* note 5.

8. JAMES E. SCARBORO & JAMES B. WHITE, CONSTITUTIONAL CRIMINAL PROCEDURE (1977) [hereinafter CONSTITUTIONAL].

9. JAMES B. WHITE, WHEN WORDS LOSE THEIR MEANING (1984) [hereinafter WORDS].

10. I reviewed it myself in John D. Ayer, *Law, Literature and the "Conversation of Mankind,"* 4 CARDOZO ARTS & ENTERTAINMENT L. J. 261 (1985).

11. See Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989); Robert M. Cover, *The Supreme Court, 1982 Term - Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983); Gerald P. López, *Lay Lawyering*, 32 U.C.L.A. L. REV. 1 (1984); Robin West, *Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory*, 60 N.Y.U. L. REV. 145 (1985).

quicker succession. *Heracles' Bow*¹² appeared in 1985; then *Justice as Translation*¹³ appeared in 1990. By this time, White had achieved a modest eminence; he spoke at a plenary session of the Association of American Law Schools' convention in New Orleans in 1989. Now, he has written *Hope* and *Starres*.

Although it may not always have been apparent to his readers, White had a fairly clear notion of what he was trying to do from the start and of how he was trying to do it. In the introduction to *Legal Imagination*, he said: "[A]nyone who knows Theodore Baird of Amherst College will instantly see that this book is the direct result of his teaching, full of his ideas and imitative of his style; and to such a one, nothing here that may please or instruct will be new or unfamiliar."¹⁴

Baird is one of those remarkable academic figures who exist more often in folklore than in biography. Although he seems not to have published frequently, he passes into legend as the friend of writers as various as James Merrill and Scott Turow and as the proponent and exemplar of a particular kind of teaching. Particularly at this late a date, it is probably impossible for an outsider to capture precisely what Baird proposed. We do, however, have some fragmentary shards of evidence. William H. Pritchard, himself once a student and later a professor of English at Amherst, has written of his own experience as a student in a course that Baird inspired. It was the required first-year composition course: "[It was] a brilliantly original approach to writing as an activity. That activity, performed by us three times each week — in short responses to difficult, sometimes impossible questions about thinking, meaning, knowing, and other essential human pastimes — was my introduction to serious intellectual inquiry."¹⁵

In *Starres*, White apparently speaks of the same course — a course, as he says, "that shaped much of the life of the college; we learned that in our writing we spoke in voices that defined us, and

12. JAMES B. WHITE, *HERACLES' BOW* (1985) [hereinafter *HERACLES' BOW*].

13. JAMES B. WHITE, *JUSTICE AS TRANSLATION* (1990) [hereinafter *JUSTICE*].

14. *LEGAL IMAGINATION*, *supra* note 5, at xxvi. White also acknowledges Baird in *HERACLES' BOW*, *supra* note 12, at xvii. This reference reminds me of a particular aspect of White's study of relationships: his search for the right relationship between the teacher and the student. Anyone who has ever tried his hand at teaching knows that there are a number of ways to encounter students, most of them wrong. You can bully them. You can mesmerize them. You can kowtow to them. You can set them apart in a posture of ironic detachment. Or you can strike out — as White was apparently taught to strike out — to find some plane on which you can engage them, not as equals in knowledge or experience perhaps, but as equals in claim to respect and in responsibility to the truth and as participants in a great adventure.

15. William H. Pritchard, *Ear Training*, in *TEACHING WHAT WE DO: ESSAYS BY AMHERST COLLEGE FACULTY* 127 (1991). For an account of a course based on Baird's, see WILLIAM E. COLES, JR., *COMPOSING: WRITING AS A SELF-CREATING PROCESS* (1983).

our readers, and the relation between us. Writing is the creation of a self, as one of the teachers put it"¹⁶

Writing is the creation of a self. The phrase is pivotal. You almost might be tempted to say that he is engaged in "the teaching of ethics." But this phrase is slippery at best, and I suspect White himself would avoid it, for reasons that a moment's reflection will make manifest. Any law teacher with the most elementary sense of history will recall the transports of anxiety that accompanied teaching ethics over the past generation. Its potted history is easily retold; in the undertow of the Watergate scandal, someone noticed that an inordinate number of the malefactors held law degrees. Law professors had failed the public, so went the standard litany, by propagating such a generation of knaves and scoundrels, and we were enjoined to "put our house right." Responding with a kind of panicky alacrity, the legal education establishment started slapping "ethics" requirements on just about everything: the law curriculum, the bar exam, the continuing education agenda, and so forth. A few voices protested that this was all a futility or worse, but they went mostly unheard. Granted, there are some things a lawyer is not supposed to do that a layman might not intuitively realize — for example, lawyers should not commingle funds. Therefore, instruction in ethics on these more obscure issues might be worthwhile. But you do not "learn" ethics the way you "learn" other subjects like Spanish. You may say, "I'm going to Madrid next summer; I'd better brush up on the pluperfect," but you do not say, "I'm going to face a difficult ethical decision next fall; I'd better brush up on the categorical imperative."

Quite the contrary, most people know perfectly well, even without a legal education, that they have no right to steal a red hot stove just because it does not happen to be nailed down. As for the effect of teaching and learning — well, you could start with the example of Strepsiades in Aristophanes's comedy *The Clouds*,¹⁷ who went to Socrates's thinking-school so the great master could teach him how to evade his creditors. For a modern instance, one could cite Myron Scholes and Mark Wolfson's remarkable textbook, *Taxes and Business Strategy*.¹⁸ A reviewer has remarked that this is the sort of book "that defines a discipline for students who are not practitioners."¹⁹ Scholes is one of that small group of the elect whose names

16. STARRES, *supra* note 4, at 20.

17. ARISTOPHANES, *CLOUDS*, WOMEN IN POWER, KNIGHTS 14 (Kenneth McLeish trans., 1979).

18. MYRON S. SCHOLES & MARK A. WOLFSON, *TAXES AND BUSINESS STRATEGY: A PLANNING APPROACH* (1992).

19. John E. Karayan, Book Review, 24 J. INTL. BUS. STUD. 602 (1993).

are regularly mentioned as candidates for the Nobel prize in economics. Yet, as the authors of another review commented:

Scholes and Wolfson bring to the venture a spirit that, at least in academic publications, is unique as far as we are aware. They bring a sophisticated, almost completely unadulterated, private optimizing focus to bear on the existing provisions of the Internal Revenue Code. There is an objective function to be maximized, there are parameters, and there are constraints. To arrive at a constrained maximum, you push a constraint until it binds. In this world, the tax rules are just the principal constraints, restrictions on the maximization of private wealth, to be pushed until they bind. It is an approach to taxation that can make for edifying reading, especially at the hands of two economists as astute (and as fascinated by tax rules) as these. It brings to tax planning a sophisticated economic perspective that could be matched by few (if any) practitioners.²⁰

Or to put it more precisely: we will not tell you anything that will send you to Leavenworth, but we are eight thousand times brighter than those pinheads down at the Internal Revenue Service, and we see no reason why you should be bound by their limitations. Or as a colleague of mine complained, on a particularly grey afternoon in the faculty lounge, "Now I know how Dr. Frankenstein felt when he heard the rumbling basement."

Teaching, in any ordinary sense, simply cannot avoid this problem. We teach ethics because we cannot do otherwise. The student learns ethics from the teacher the same way he learns them any place else: through a patchwork of fears, loyalties, attachments, and betrayals. Apt is the example of the lady named Wilde,

Who kept herself quite undefiled
By thinking of Jesus
And loathsome diseases
And the bother of having a child.

As to the great spasm of legal ethics education, there is no conclusive evidence that it has done any permanent harm. But it would be a brave soul who would argue that lawyers are *more* ethical today than they were a quarter-century ago. Moreover, a cynic might argue that all our fuss and bother about ethics has had no more consequence than the public conversion of a former savings and loan executive as he tries to leverage his way out of a halfway house and into a community service program.

Against this tendency, there are a small number of law scholars who have sought to confront directly the perplexities of ethics teaching. They work in diverse ways, and it is possible that they would not enjoy seeing their names in the same paragraph. I am thinking of Tom Shaffer, who combines his somewhat hard-edged

20. Theodore S. Sims & Emil M. Sunley, Book Review, 45 NATL. TAX J. 451, 452 (1992).

Christianity with surprising hopefulness,²¹ Howard Lesnick, who combines the texture of rabbinical wisdom with a more radical agenda for change,²² and Anthony Kronman, who has put the person of the lawyer at the center of his scholarly agenda.²³

One would also have to include White, for whom the purpose of this "training" is not merely to teach writing as an instrument for communication, but to introduce the student to a way of life. This way of life does not counsel isolation, but rather trying to establish the proper relation between the self and the world, the right mix of sympathy and self-respect. Taken in this context, there are two characteristics that distinguish White's work from other scholars examining the teaching of ethics. One is a particular kind of "slow reading" of literary texts.²⁴ The other is the device of reading both "literary" texts, for example, a Jane Austen novel, and "legal" documents side by side, seeking to apply the same tools of analysis to both. Slow reading of legal documents is, or at least was, unexpected, and the juxtaposition adds freshness to the nonlegal work as well.

Neither slow reading nor juxtaposing legal texts seems quite so foreign to the discourse of legal scholarship today as it would have twenty years ago — White's presence itself surely is a factor in their increasing familiarity. You could say that slow reading, for example, is the very essence of law schooling, though it is hard to show that lawyers traditionally do it the same way the literary people do. As to reading both literary and legal texts alike — well, Northrop Frye has shown us how we base our literary tastes in the conventions of genre.²⁵ In addition, Clifford Geertz has shown us how genres become "blurred,"²⁶ and a hundred more abstruse theorists have dissected this insight, classified it, and dressed it up in jargon. Thus it is probably no longer provocative — though it may still be instructive — to recognize Marx's *Kapital*, for example, or Weber's *Protestant Ethic and the Spirit of Capitalism* as great nineteenth-

21. See most recently THOMAS L. SHAFFER & ROBERT F. COCHRAN, *LAWYERS, CLIENTS AND MORAL RESPONSIBILITY* (1994), and, more generally, John D. Ayer, *Narrative in the Moral Theology of Thomas Shaffer*, 40 J. LEGAL ED. 173-94 (1990) (book review).

22. See HOWARD LESNICK, *BEING A LAWYER* (1992); cf. ELIZABETH DVORKIN, JACK HIMMELSTEIN & HOWARD LESNICK, *BECOMING A LAWYER* (1981).

23. ANTHONY KRONMAN, *THE LOST LAWYER* (1993).

24. The phrase is from *Starres*, in which White introduces it as an artifact of the Amherst tradition, but it seems equally applicable here. STARRES, *supra* note 4, at 19-20; cf. EDUCATION AT AMHERST 241-43, 321-23 (Gail Kennedy ed., 1955); TEACHING WHAT WE DO: ESSAYS BY THE AMHERST COLLEGE FACULTY 1-11, 127-43 (1991).

25. See, e.g., C. NORTHROP FRYE, *ANATOMY OF CRITICISM* 243-337 (1957).

26. See Clifford Geertz, *Blurred Genres: The Refiguration of Social Thought*, in LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETATIVE ANTHROPOLOGY 19-35 (1983).

century *imaginative* works, justifying comparison with, say, *Middlemarch* or *War and Peace*.²⁷

At least one important metaphysical presupposition underlies White's work. White belongs to the group that says we use language not merely to *describe* but also to *define* our world — and this notion, too, probably sounds less alien twenty years after he first made it.²⁸ Important also is the fact that for White this process of definition, like language itself, is a collaborative process. White is nothing if not sociable in his disposition; he seems to take particular pleasure in writing generous acknowledgments to friends and supporters.²⁹ But he knows we are not mere creatures of others. Rather, he understands as well as anyone that a person defines a life, or constitutes a self, in a ceaseless dialog between self and world. These ideas come together in a fully articulated notion of friendship — the kind of friendship in which friends educate each other and tell each other when they are being fools and should stop. In a related perspective, White understands the close and complex relationship between law and social practice, exemplified by Andy Capp's dictum that the only difference between law and custom is that it takes a lot more courage to break a custom.

White's most notable contributions to the *technique* of reading seem to be two: first, an insistent stress on the refractory richness of language, and, second, a literary person's eye for form and the art of form. The first point — linguistic richness — is one you would think should be obvious to a lawyer, and heaven knows we spend time enough trying to tease our students into a kind of sophistication about words. But White's essays are an awkward reminder that most of us are not very good at this kind of subtlety — or perhaps more precisely that we give up too early and retreat to

27. For free reading during my first year of law school, I made my way through John Dos Passos's great trilogy, *U.S.A.* Late in the year, nearing the end of my contracts book — I believe it was smack in the middle of *Corn Exchange v. Klauder*, 318 U.S. 434 (1943) — it struck me that both *U.S.A.* and the contracts book offered the same textured weaving and reweaving of experience. Years later I read, more or less simultaneously, Claude Lévi-Strauss's *Triste Tropiques* and Gabriel Garcia Marquez's *One Hundred Years of Solitude* — the one teasing fantasy by pretending to be fact, the other affronting fact with what must have been fantasy, and to this day I have to stop and think just which was which. For his novel *Hopscotch*, the Latin American writer Julio Cortazar invites the reader to proceed by at least two different sequences; law professors do the same. JULIO CORTAZAR, *HOPSCOTCH* (1966).

28. White acknowledges his debt to the technical literature of "performative" speech in *WORDS*, *supra* note 9, at 290-91.

29. Particularly remarkable in this uncertain time is the seeming durability of his affections. The names of Arthur Adkins, L.H. LaRue, Theodore Eisele, Joseph Vining, and Mary White all appear among the acknowledgments in *Hope* (p. xv), and all have appeared in acknowledgments at least twice before. See *WORDS*, *supra* note 9, at xv and HERACLES BOW, *supra* note 12, at xvii. In all of White's acknowledgments, many names appear more than once. The practice goes further: *Heracles* is dedicated to LaRue; *Words* to "Mary" (White?) and *Hope* to "The Monday Night Group."

some functional "single meaning" that seems to meet the needs of the institution, or at least of the bar review outline.

White's second contribution — the potentialities of form — is, to coin a favorite White term, more problematic. To his credit, White shows a kind of bravura skill in demonstrating how the form of a work may serve to amplify, criticize, or question the very work that it seems to embody. The trouble is, however, that this tactic seems to operate best on works we knew were "literary" all along — it fails most conspicuously on those texts most conventionally legal. If I am correct on this point, then the necessary inference is that White fails at precisely the point where he would most like to succeed — at unifying legal and literary writing.

Readers of White's prior work will recognize a lot of this framework in *Hope* — worked out in an exposition that is perhaps a bit more familiar than one might wish. As in the earlier books, White offers a set of loosely connected essays on texts, some legal, most not. The canonical this time include, for example, Plato's *Crito* (pp. 3-44); Jane Austen's *Mansfield Park* (pp. 187-223), and Emily Dickinson's poetry (pp. 224-71). Only one instance clearly exemplifies the legal: *Planned Parenthood v. Casey*³⁰ (pp. 153-83). Hale's *Consideration Touching the Amendment or Alteration of Lawes* (pp. 124-52), surely counts as a legal document in some sense, but it is not part of any conventional law school curriculum; this is also true of Hooker's Preface to the *Lawes of Ecclesiastical Politie* (pp. 82-123). The remaining penumbral items include Lincoln's Second Inaugural (pp. 294-302) and a speech from the dock by Nelson Mandela (pp. 279-94).

The nominal subject matter of the book is "authority" — how texts "assert, or deny, that a person should submit to . . . authority. . . ." (p. xi). Presumably this distinguishes it from *Words*, in which White examines the claims we make for the meaning of words and the failure or disintegration thereof; *Translation*, in which the subject is, well, translation; and even *Heracles*, in which White examines the perhaps somewhat broader subject of "rhetoric." But not a lot rides on the distinction of substance. Whole chapters could be plucked out and dropped into one or another of the earlier works, and the careless reader might well not notice. The unifying force of White's strategy seems far more obvious than any distinctiveness of content.

In form also, there are similarities to White's earlier work, particularly *Words* and *Legal Imagination*. Both *Words* and *Hope* are more or less discontinuous essays, threaded loosely on a common strand. Each includes a text from Plato and another from Jane Aus-

30. *Planned Parenthood v. Casey*, 112 S. Ct. 2791 (1992).

ten. Each text is intelligible in the larger context: the ambiguity of community is surely one of the defining tropes of classical Athens, and Jane Austen surely represents the novelist of friendship par excellence. In the table of contents, *Hope* speaks of "Creating a Public World" (p. vii); *Words* speaks of "Making a Public World."³¹ Each speaks of the "Self" — *Hope* refers to "The Claims of the World on the Self, the Self on the World" (pp. 3-44), "the Authority of the Self" (pp. 187-271), and "Reconstituting Self and World" (pp. 275-305); *Words* speaks of "The Reconstitution of Language and Self in a Community of Two."³² Comparisons with *Heracles* and *Translation* are not quite so insistent, but, in both those books, as in *Words* and *Hope*, White essays the device of treating a judicial opinion like a literary text.

Indeed, there is evidence that the roots of White's approach in *Hope* go back to his earliest works. *Hope* contains an instructive juxtaposition of Shakespeare's *Richard II* and Richard Hooker's Preface to the *Lawes of Ecclesiastical Politie* (pp. 47-123). There is an extensive excerpt from Hooker's Preface in *Legal Imagination*,³³ and a brief, but suggestive, discussion of Richard II in the same book.³⁴ *Legal Imagination* also gives an important role to Jane Austen, particularly *Pride and Prejudice*.³⁵ The Hooker selection is perhaps somewhat recherche; Sir Matthew Hale's *Considerations Touching the Amendment or Alteration of the Lawes*, discussed at length in *Hope* is, by White's own acknowledgment, "not widely available" (p. 131) — one might call it "downright obscure" as it was published only once, in 1787. But it appears to have been on White's mind nearly twenty years ago, because it provides the epigraph to *Constitutional Criminal Procedure*.³⁶

31. WORDS, *supra* note 9, at vii. White seems to have a near-fatal weakness for the gerund: on *Hope*'s Contents page alone, we have "creating," "imagining," "constituting," "making," "transforming" "reconstituting" and "giving" (p. vii). I suppose a Jakobsonian critic could instruct us on whether and to what extent this affection marks White as a "nominal" as distinct from a "verbal" person, and the implications of such a distinction. Perhaps happily for both of us, I am not cut out for the job.

32. WORDS, *supra* note 9, at vii.

33. LEGAL IMAGINATION, *supra* note 5, at 670-81.

34. *Id.* at 817.

35. *Id.* at 401-07, 866, 872-73. He also gives some attention to Austen's *Mansfield Park*. *Id.* at 249-51. White may have noticed that he has pretty much played his hand on Jane Austen novels. The remainder — *Persuasion*, *Northanger Abbey*, and *Sense and Sensibility* — have their charms, but fairly common consent classes them as lesser works. Of course, it is well within the rules for a literary academic to discover powers hitherto unsuspected in a "minor" work.

36. "It is most certain, that time and long experience is much more ingenious subtle and judicious, than all the wisest and acutest wits in the world coexisting can be." CONSTITUTIONAL, *supra* note 8, at xv (quoting Sir Matthew Hale, *Considerations Touching the Amendment or Alteration of Lawes*, in 1 A COLLECTION OF TRACTS RELATIVE TO THE LAW OF ENGLAND 244, 254 (Francis Hargrave ed., Dublin 1787)). For *Hope*'s exegesis on the text, see p. 135.

You can see most or all of White's distinctive strategy exemplified in *Hope*. For a literary person imbued in the culture of the law, White's inclusion of *Richard II* (pp. 47-81) — Shakespeare's great play about the poet-king, more poet than king, who crumbles under the force of his more purposeful competitor — is a happy choice of text. My own first exposure to *Richard II* was hearing John Gielgud read selections on a wonderful old 33 1/3 record that I found in a quirky little book-and-record shop in, of all places, suburban Cleveland. I thrilled at Gielgud's reading, and I admired the eponymous hero — it was with a certain educative chagrin that I finally read the play and came to see how much the hero was indeed the author of his own undoing. White does an elegant job of showing that Shakespeare's sympathies are, if anywhere, not with King Richard or with Bolingbroke the rebel, but rather with the *fact of tension itself* — the "position of increased responsibility and decreased certainty" (p. 79), where Shakespeare leaves us, and where, perhaps, we are doomed to subsist.

White's treatment of the *Crito* is somewhat more unexpected (pp. 3-43). I confess I had not thought highly of this dialog before, having read it first in an elementary Greek class because it is short enough and straightforward enough to serve as a vehicle — a pilot vessel, or sometimes, I suppose, just a tugboat — for the transition from the sureties of grammar and syntax to the uncharted seas of literature. Imagine my surprise when I find that there is more to it than that: that the character Crito's simplistic urgency has an art all his own, and that the dialog operates with full Platonic — or is it Whiteian? — sleight of hand, at once an example and a criticism of its doctrinal premise. In his discussion of *Richard*, White uses the technique of dramatic tension to exemplify a world of dramatic tension; here he uses a dialog on authority to assert the authority of dialog.

With *Mansfield Park*, the results of White's analytical enterprise are less surprising (pp. 187-223). The problem here is that *Mansfield Park* is a novel full of good material built around a heroine whom no one can like very much — or, more precisely, whom the author liked altogether too much, letting her authorial critical facilities lapse in the process.³⁷ White concedes that Fanny is not a success but argues that we can learn from her predicament in any event. That is true, but not so original as some of White's other points in *Hope*.

37. The distinction is not just a trifle. Of Emma, Jane Austen said she had created a heroine whom no one would like but herself. Lionel Trilling, *Emma and the Legend of Jane Austen*, in JANE AUSTEN, *EMMA: A CASEBOOK* 118, 122 (David Lodge ed., 1968). That is true in its way, but Austen's affection for Emma is far more detached and critical — and therefore productive — than anything she did with Fanny in *Mansfield Park*.

White's choice of Emily Dickinson may seem odd at first blush, but it need not be so. It is customary to think of Dickinson as the most private of poets, while White is ultimately a social being. Yet, as White shows, Dickinson's art is not just her expression of her private self. It is also the struggle to define her private self inside a set of constraints to which she will not yield but from which she cannot — and does not really want to — escape. Indeed, in his introduction to Dickinson, White offers about the most explicit account I have seen anywhere of his own point of departure:

Whenever we speak, those who listen to us have expectations as to how we shall do so. . . . In becoming competent at our languages, each of us must find a way, actually a set of ways, to address the expectations that are in some sense the most important material with which we work.

Sometimes, of course, there is no problem: there are moves in our discourse that seem adequate to the occasion on which we wish to use them. . . . But if all of our talk were of this kind it would be nothing but reiterated cliché. . . . Instead, in the course of life we find ourselves again and again confronting the inadequacy of our language, both on small and large occasions. . . .

Dickinson faced the question whether her expressions would count as poetry, and be taken seriously as such, or whether they would be classified some other way — and since they obviously aspired to be poetry, not prose or some other established form, this would mean their being entirely erased." [pp. 224-25]

This is good as a characterization of Dickinson,³⁸ but even better as a characterization of White and what it is that White tries to do.

That leaves the more obviously legal materials. Here, as I suggested above,³⁹ the appropriate response seems more complicated. The keystone of White's argument may be his presentation of *Planned Parenthood v. Casey*,⁴⁰ which appears about midway through the book (pp. 153-83). In this discussion we see the customary White technique, trying to understand the work not just in its surface message but in its structure approached as a way of doing business. *Casey* is certainly a good example, both in substance and structure, as the Court attempts to understand abortion in terms of its own somewhat messy doctrinal history. Recognizing — indeed stressing — this context, White's admiration for *Casey* is great. "This is not a reluctant or joyless opinion," he declares (p. 170). Rather, it is an opinion in which the Court "commits itself to a vision of law as a process of culture that works against time" (p. 179).

38. The agonizing struggle between self and form is surely not a uniquely American phenomenon, but it is not uniquely Dickinsonian either, and it does seem to recur in other important American instances. Think of Wallace Stevens, for one, or Charles Ives, both in their separate ways besotted with their heritage and in conflict with it.

39. See *supra* text accompanying note 30.

40. *Planned Parenthood v. Casey*, 112 S. Ct. 2791 (1992).

Perhaps White's contention about the *Casey* opinion is true, but White quotes a critic — apparently Robin West — as reminding him that “none of this amounts to a hill of beans if one is of the opinion that a fetus is a human life and abortion is murder.”⁴¹ White, in defense, suggests that he is not really arguing the abortion issue per se — he understands our differences on that issue are vast. Rather, he says, he is trying “to reach a shared view of the way in which we can hope these differences can be lived with and addressed” (p. 182).

Can this be right? For myself, I reserve judgment. Independent of whatever clues he may offer here, I know nothing about White's view on abortion, but I doubt very much that he could have written this essay if he believed that abortion is child murder. White is trying to establish common ground for people with irreconcilable views. It may be the very irreconcilability that puts them beyond common ground, however, in which case White's very invitation may be an invitation to a corrupt compromise.⁴² Perhaps the point is that this kind of education takes time, and it will be twenty or fifty or one hundred years before we can agree on whether *Casey* performed the obligation that White assigns to it, or whether it is just another cynical manipulation of the symbols of power.

White's final chapter on Mandela and Lincoln seems not entirely successful. Since Edmund Wilson's appreciation of Lincoln in *Patriotic Gore*,⁴³ it has been acceptable to recognize Lincoln as a great literary and perhaps even poetic sensibility, now duly memorialized in his own volume of the Library of America.⁴⁴ White's ear for the Second Inaugural is alert and receptive, but his reading does not really offer any surprises.⁴⁵ With Mandela, assuming White has made the best possible case, I would have to conclude that the poetry remains in the life, not the work. Mandela is in a sense the ideal White hero: dignified and reflective, insistent on forming and expressing his own purposes, even in the shadow of the gallows. The mere presence of Mandela on the planet is a *mitzvah* — the Hebrew word for good act. Of course, it is also evidence, if we need any more, that the white world owes more debt to mercy than

41. P. 182; see also p. xv.

42. Robert Cover's discussion of the posture of the abolitionists before the Civil War provides a constructive comparison: for some, a system that supported slavery was itself so corrupt that even to recognize it was to share in its corruption. ROBERT COVER, *JUSTICE ACCUSED* 217-25 (1975).

43. EDMUND WILSON, *PATRIOTIC GORE* 99-130 (1962).

44. See volumes 45 and 46 of the Library of America, ABRAHAM LINCOLN, *SPEECHES AND WRITINGS 1832-58* (1989) and ABRAHAM LINCOLN, *SPEECHES AND WRITINGS 1859-65* (1989).

45. Aside from Wilson, White had another extremely tough act to follow here. See GARRY WILLS, *LINCOLN AT GETTYSBURG* (1992).

to justice for its comfort and convenience. The mere presence of Lincoln was a mitzvah, too, but it is not clear, nor indeed is it necessary, that the blessings be the same.

This leaves White's comparison of Hale and Hooker. When we consider these essays, we can observe an odd sort of reversal. I said before that there was a certain familiarity about White's work, both in form and content. Yet, in an important way, White's very consistency becomes — that word again — problematic. White may have stayed the same in important respects over a quarter century. But the world has not. Indeed White is, in one of many possible senses of the term, a deeply conservative writer: conservative not merely in his habits, but in his affections, committed perhaps most of all to the reception and transmission of an inheritance.

White's comparison of Hale and Hooker demonstrates his fear of radicalism and his respect for tolerance. Hale and Hooker are not really "contemporaries" of each other — Hooker died in 1600, Hale was born in 1609. But Hooker's work came into focus in large measure through an appreciative biography, written by Izaak Walton, published in 1665, so in a functional sense, they are closer contemporaries than you might at first guess.⁴⁶ From the standpoint of the reader, then, both addressed the same task: how to come to terms with the near-apocalyptic power and force of the English revolution, broadly defined. What White admires about them both is their effort to bridge the gulfs of recrimination and incomprehension that threatened to tear English society apart. What he appreciates, of course, is their concern to find a strategy for reconciliation through language. Indeed it is more than just appreciation; White is trying to exemplify precisely those virtues of sympathy and advocacy that he so much wants us to admire. Such a task is not easy. Both Hooker and Hale surely died without any sense of how much, if at all, they had succeeded in achieving not just a community but a community worthy of the name — a community for which it would be worthwhile to strive. Probably the best you can say for this effort is that it is a battle that must be won over and over.

As White must have noticed — he is far too observant not to have — Butskellism is not faring so well these days on either side of the Atlantic. Yahoo populists, the Flem Snopeses of the world, find themselves in joyous alliance with old aristocrats everywhere as they undertake to dismantle the fuzzy bequest of centrism. Margaret Thatcher has her Alan Clark⁴⁷ and Newt Gingrich may profit by her example — and will profit as long as he has native aristo-

46. IZAAK WALTON, *THE LIFE OF MR. RICHARD HOOKER* (London 1665).

47. See ALAN CLARK, *MRS. THATCHER'S MINISTER* (1993). Clark's case has particular dramatic impact because he is the son of the late Kenneth Clark, the poster boy for the Masterpiece Theatre generation. In his dedication, the young Clark seeks to aestheticize the new gaucherie: "For my beloved Jane, around whose cool and affectionate personality there

crats like William F. Buckley and card-carrying bluebloods like William Weld. Graduates of Groton and Amherst gleefully grace the pages of the *American Spectator* or the *National Review*. And what of White?

Once again, the British experience may be relevant: they seem to be about a half cycle ahead of us in these matters. At any rate, if there is a single intellectual figurehead for modern British conservatism, it is surely Michael Oakeshott. At first blush, Oakeshott seems to burgeon with precisely the sorts of virtues that White would admire: culture, civility, and a rich sense of the infinite nuance of human relations. Indeed, in terms of general world view, there is probably no one person who reminds me so much of White as Oakeshott's star pupil, Shirley Letwin — Chicago-trained, emigrant to Britain, the author of *The Gentleman in Trollope*, the quintessential study of its kind.⁴⁸ Yet Letwin is most likely to be remembered not for her "gentlemanly" behavior but for her brilliant, exhaustive, and thoroughly partisan defense of the new age, *The Anatomy of Thatcherism*.⁴⁹ Old Butskell must be spinning in his grave.

Does White care about this sea change in tastes and aspirations? Does he notice? A person who engages Crito as a living presence is one inclined to take the long view. He may assume that this, too, shall pass. Otherwise, he may assume that the best thing he can do in such troubled times is the same thing he would do in any other time: to insist on being a gentleman in his own way, curiously quaint, not precisely ridiculous, redeemed by his capacity to keep the faith. In the words of his beloved Hooker:

Though for no other cause, yet for this; that posteritie may know we have not loosely through silence permitted things to passe away as In a dreame, there shall be for mens information extant thus much concerning the present state of the Church of God established amongst us, and their carefull endeavour which woulde have upheld the same.
[p. 94]

raged this maelstrom of egocentricity and self-indulgence." One suspects that the unkindest thing you could say to Clark is that he really is not as bad as all that.

48. SHIRLEY R. LETWIN, *GENTLEMAN IN TROLLOPE* (1982).

49. SHIRLEY R. LETWIN, *THE ANATOMY OF THATCHERISM* (1992). An aside: Someone needs to explore the significance of the parent-son combinations in the new conservatism on both sides of the Atlantic. In America, we have Gertrude Hillefarb, Irving Kristol, and their son, William Kristol. We also have Norman Podhoretz, Midge Decter, and their son, John Podhoretz. The British have William and Shirley Letwin and their son, Oliver — but then, his main public achievement so far has been to lose a race for Parliament to Glenda Jackson.